

**MINUTES  
of the  
FIFTY-SECOND MEETING  
of the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 11, 2015  
Room 322, State Capitol  
Santa Fe**

The fifty-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on August 11, 2015 at 10:15 a.m. in Room 322 at the State Capitol in Santa Fe.

**Present**

Sen. John M. Sapien, Chair  
Sec. Tom Clifford  
Carl Foster  
Rep. James Roger Madalena  
Sen. Mary Kay Papen  
Sen. Cliff R. Pirtle  
Sen. Benny Shendo, Jr.  
\*Rep. James E. Smith  
Jerry Stagner  
\*Sen. Mimi Stewart  
Rep. Don L. Tripp

**Absent**

Rep. Dennis J. Roch, Vice Chair  
Deputy Sec. Paul Aguilar  
Rep. Sharon Clahchischilliage  
Lisa Grover  
Tracy Hofmann  
Rep. Larry A. Larrañaga  
Rep. W. Ken Martinez  
T.J. Parks  
Mike Phipps  
Sen. Sander Rue  
Sen. John Arthur Smith  
Allan Tapia  
James P. White

**Advisory Members**

Sen. Howie C. Morales  
Rep. Patricio Ruiloba  
Sen. John C. Ryan  
Sen. William P. Soules  
Sen. Pat Woods

Rep. Eliseo Lee Alcon  
Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Rep. Patricia Roybal Caballero  
Sen. William E. Sharer

\* Senator Papen designated Senator Stewart to be a voting member for this meeting.  
Representative Tripp designated Representative Smith to be a voting member for this meeting.

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
Sharon Ball, Researcher/Drafter, LCS  
Jeff Eaton, Research and Fiscal Policy Analyst, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Tuesday, August 11****Welcome and Introductions**

The chair called the meeting to order at approximately 10:20 a.m., welcomed members and guests and asked members to introduce themselves.

**Appointment of Voting Members**

Mr. Burciaga informed the chair that the task force did not have a quorum, whereupon the chair recognized the appointment by Senator Papen of Senator Stewart as a voting member and the appointment by Representative Tripp of Representative Smith as a voting member for this meeting, thereby providing a quorum.

**Approval of Minutes**

Without objection, minutes of the June 2 meeting were approved as previously mailed to members and provided in their folders.

**PSCOOTF Resource Materials: Introduction**

Ms. Ball presented to the PSCOOTF the 2015 resources document consisting of reference documents and information that she indicated members may find useful during the interim. Highlighted items included: the "Public School Capital Outlay Funding Standards-Based Process Flow Chart" (Tab 1); "How Offsets Work" (Tab 4); the "Report of the Special Master in the *Zuni* Lawsuit and the Judge's Order Approving the Report" (Tab 6); "Property Tax Facts" (Tab 9); and "Charter Schools in Public Buildings: Current Status" (Tab 10).

In response to a member's question about the methodology for determining which districts are classified as impact aid districts, Ms. Ball indicated that a listing of districts that qualify as impact aid districts is maintained by the Public Education Department (PED) and is included in members' reference booklets. A task force member added that impact aid funding is a federal program that provides revenue to local government entities, including school districts, in lieu of property taxes not received from federal lands, such as tribal land and military bases. These lands are not taxable lands and therefore reduce the district's ability to raise capital outlay funding. Ms. Ball added that other federal property includes land owned by the U.S. Forest Service, the Bureau of Land Management, Sandia National Laboratories (SNL) and Los Alamos National Laboratory.

In response to discussion and questions about the reason that Albuquerque Public Schools (APS) and other districts without tribal lands receive impact aid funding, Ms. Ball explained that

a district can receive funding if a student is attending a school in the district but is not living on the reservation. These students must self-report to the school district that they attend in order for the school district to receive the federal impact aid funding. She also noted that Kirtland Air Force Base and SNL are located within APS boundaries.

A member inquired about the State Land Office (SLO) distributions formula for leases and rents on federal lands and if, and the way in which, those funds affect distribution of the state equalization guarantee (SEG). Secretary Clifford explained that approximately 83 percent to 84 percent of funding collected by the SLO goes to the Permanent School Fund, which is revenue counted as part of the state general fund, which is the primary source for the SEG distribution.

In response to an additional question about the relationship between impact aid funding and the SEG, Ms. Ball indicated that the PED takes credit of 75 percent of basic federal impact aid payments because New Mexico is determined to be an "equalized state" under the federal code. The state takes 75 percent credit for impact aid distributions via a reduction in the SEG distribution. Ms. Ball indicated that the impact aid funding to a school district can be significant, noting that approximately 45 percent of the Zuni Public School District's operating budget is funded from federal sources, while the Santa Fe Public School District receives approximately one-tenth of one percent from federal sources. Task force members requested that additional information on impact aid be presented at a future meeting this interim.

Another member asked how and if current lawsuits are related to the impact aid funding. Mr. Burciaga explained that the state is currently involved in two active lawsuits: the so-called *Zuni* capital outlay lawsuit, which is still active (since being filed in 1998); and a lawsuit filed by the Mexican American Legal Defense and Educational Fund that has been combined with another lawsuit filed by the New Mexico Center on Law and Poverty. He said that the interaction and overlap (if any) of these lawsuits remain to be seen, but both are based on the state constitutional requirements of provision of a "uniform" and "sufficient" education system for all New Mexico students.

### **Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards, 2015-2016 Funding Cycle**

Joe Guillen, chair, PSCOC Awards Subcommittee, and Robert Gorrell, director, Public School Facilities Authority (PSFA), presented to the task force the recent awards made in July, as well as the funding outlook, status of the statewide Facilities Condition Index (FCI) and the PSCOC "Systems Initiative". This year, three awards were made in three school districts: Roswell (Del Norte Elementary School); Española (Abiquiu Elementary School); and Clovis (Highland Elementary School). Awards were for planning and design with construction award funding to come at a later date.

Mr. Guillen reported that the outlook for PSCOC funding is negative because of a number of factors:

- numerous projects in the current queue;
- Department of Finance and Administration accounting methodology changes from "first-in, first out" to project budgeting;
- unanticipated increases in project scope;
- district requests for funding assistance through waivers and advances;
- project cost inflation;
- increases in the number and amount of direct legislative appropriations from the Public School Capital Outlay Fund; and
- reduced revenue from oil and natural gas.

Mr. Gorrell presented a list of projects indicating that approximately \$207 million was awarded in fiscal year (FY) 2015 (\$9.1 million of roof awards and \$197.9 million in design and construction awards). FY 2016 "out-of-cycle" awards are projected to top \$184.8 million.

Mr. Gorrell provided a description and status update of a new initiative of the PSCOC: "building systems". Legislation passed in 2015 provides for awards up to a total of \$15 million in FY 2016 through FY 2020 to fund building system projects. Mr. Gorrell described the program and indicated that it would help the state maintain the statewide FCI in the face of reduced funding. Mr. Gorrell testified that improvement or maintenance on the statewide FCI requires sufficient revenue, adequate maintenance and efficient space utilization. The systems bill should help fund projects that could make buildings easier to maintain and, where possible, reduce or remove spaces that have been underutilized by the district. Mr. Gorrell indicated that it is important for the state to emphasize improved maintenance and efficient space utilization in the face of reduced funding if the state is to maintain the gains it has made in lowering the statewide FCI.

Task force discussion centered on PSFA development of a maintenance measurement instrument to be used in evaluating levels of current maintenance in school districts. Members discussed concerns about appropriate maintenance of the state's school buildings and expressed concern that some districts are not adequately maintaining their facilities. Some are small school districts with resource challenges, but task force members also noted that some districts are neither small nor have resource challenges.

Another area of task force concern is the rate of construction inflation that has historically been more than five percent, thus deteriorating the purchasing power of funding available for PSCOC programs. A task force member expressed concern that a recent court decision will increase the wage scale on some projects.

Discussion continued regarding concerns about the gross square footage of current facility construction. Mr. Gorrell said that in response to a need to reduce square footage in school buildings, the PSCOC had developed new planning guidelines a few years ago. He explained that the current PSCOC practice is to make determinations of space needs in the schools at a very early planning phase. He explained that, given the current formula in statute, school districts are

still able to fund and build spaces above adequacy levels. Mr. Guillen added that school districts are beginning to make the hard decision of closing and consolidating schools given the tough budget environment they are facing.

In response to a question about the previous roof replacement and repair initiative, Mr. Gorrell acknowledged that the standards-based roof program reached its statutory sunset at the same time that the "systems" legislation was enacted. He explained, however, that roof repair and replacement falls under the current statutory definition of "system". Mr. Guillen added that one of the many positive aspects to the building systems program is that it allows for smaller projects in which school districts can participate. Previously, a project for complete renewal of a facility may have been too expensive for a smaller school district to consider applying for funding from the PSCOC.

Discussion continued with concerns expressed about ranking of school facilities and the statutory formula for providing funding. Mr. Gorrell stated that, from time to time, he hears that some school districts are not applying for funding because the state match percentage is too low to make it worthwhile for some districts on the lower end of the state participation scale.

#### ***Zuni Lawsuit Update; October 2015 Hearing***

Frank Chiapetti, superintendent, Gallup-McKinley County School District (GMCSO), and Ron Triplehorn, director, facilities maintenance, GMCSO, provided an update on the upcoming October 2015 *Zuni* lawsuit hearing. Superintendent Chiapetti thanked the task force for the opportunity to present the update. He began by saying that determining the adequacy of the current state program is premature. He referred members to information in their meeting folders that includes an amended complaint filed on July 28, 2015 to address old and new issues.

He explained that among the issues that the new complaint addresses is the state's current practice in law of "taking credit" for federal impact aid funds. Impact aid funds are intended to replace property tax revenue loss due to the presence of federal lands, such as tribal lands, within school district boundaries that cannot be taxed to raise revenue for school capital improvements. When calculating the SEG distribution of operational funding to school districts, the PED "takes credit" for 75 percent of certain categories of federal impact aid distributions to the school district.

Regarding the GMCSO student enrollment, Superintendent Chiapetti said that 75 percent of the district's 11,500 students attend schools in urban areas, as opposed to 24 percent who attend in isolated, rural areas, but that only 22 percent of property in the GMCSO is taxable. He noted that the federal government requires the district to determine the number of students who live on tribal land, which forms the basis of the calculation for receiving federal impact aid funds. He explained that the school district revived the lawsuit primarily because of this issue and because the school district seems to have what he termed as no "political clout".

In his remarks, Superintendent Chiapetti cited other issues of concern included in the amended complaint. He noted that after the special master's report and the court's order were entered in 2000, New Mexico established "adequacy standards" for public school construction. He explained that these adequacy standards, as established and implemented by the PSCOC, are not sufficient for the education of all children of school age and, therefore, violate Article 12, Section 1 of the Constitution of New Mexico. He provided the following examples of what he termed as "necessary costs" to build a public school that are not included in the adopted state adequacy standards:

- extension of utilities to school construction sites;
- teacherages for rural schools located on federal or tribal land;
- costs for business activities on the Navajo Nation;
- security features beyond magnetic locks;
- some furniture, fixtures and equipment for newly constructed buildings; and
- athletic fields beyond multipurpose practice fields.

He also stated that the currently adopted adequacy standards are not sufficient for the district to be able to comply with state public education standards, including the following:

- adequate square footage for Navajo language and culture classes required by the Indian Education Act;
- facilities to meet federal Title IX requirements (i.e., equal facilities for both boys' and girls' sports);
- state funded pre-kindergarten program requirements for parent educational rooms;
- federal "response to intervention" classrooms for at-risk students; and
- computers and computer stations for state-mandated computer-based tests.

Noting that the district is very grateful for the facilities provided as a result of implementation of the standards-based process, Superintendent Chiapetti said that with the passage of time, the funding formula that calculates the state and local shares of project costs is skewed to benefit tax-rich districts. He asserted that under the current system, property tax-rich districts are regularly able to exceed adequacy standards while property tax-poor districts do not have the same ability. He said that some districts can and do build bigger, more specialized facilities with more amenities than other less property tax-wealthy districts do. Continuing, he said that school districts with large populations have a scale advantage that reduces local funding needs, thereby allowing these districts to build facilities that are above adequacy standards. As examples of this trend, he cited Volcano Vista High School and Atrisco Heritage Academy, the latest two high schools to be built in APS, as well as a middle school in Clovis and a new high school in Hobbs.

Superintendent Chiapetti acknowledged that the current system has a waiver process in place by which a district may apply to the PSCOC for a waiver or adjustment to its required local portion of construction costs. He asserted, however, that the waiver process, as it has been

applied by the PSCOC, is non-uniform, arbitrary and prone to political influences that favor districts with politically powerful legislators. While acknowledging that the state has supplied significantly more funding from supplemental severance tax bonds since implementation of the current adequacy standards-based process, he said that the funding designated for capital needs far exceeds the amount of available funds because all 89 school districts, together with established charter schools, are able to apply for the funds, whereas only districts with a limited property tax base that had used all available funding were able to apply under the old "critical capital outlay" process. He also noted that only capital funding, not maintenance funding, was included in the original lawsuit.

Among other concerns, Superintendent Chiapetti brought up the following issues.

- Because of the isolated, remote location of Tse'Yi'Gai High School, the district must bear the cost of hauling 100 gallons of diesel fuel per day from Crownpoint.
- The PSCOC requires the school district, in its construction planning, to do "value engineering" that, in particular, caused problems in a school that, because of value engineering data, had to remove drains and pumps from its plans.
- The GMCSD incurs additional costs because of the need to extend utilities to schools in isolated rural areas.
- The district does not have baseball and softball fields, so it cannot host interscholastic tournaments.

In response to task force discussion and questions about the upcoming hearing in October, Superintendent Chiapetti said that he expects the court to consider the extra burden on the district because of the need to provide teacherages in its rural areas.

Other task force discussion centered on the section of the amended complaint filed by the district in July, which states that the GMCSD did not receive any direct legislative appropriations during the recent special session. Task force members asked Superintendent Chiapetti if the district had put in any requests to any of its legislators. Superintendent Chiapetti responded that the district does not request direct appropriations because of the offset in PSCOC awards required by statute for direct appropriations.

Some task force members expressed surprise about the statement in the amended complaint that the PSCOC waiver process is non-uniform and arbitrary.

### **Public School Capital Outlay Standards-Based Process — School District Changes in State and Local Share Determinations: The Case of the Carlsbad Municipal School District (CMSD)**

Antonio Ortiz, director, Capital Outlay Bureau and Transportation Bureau, PED, and Mr. Eaton gave a presentation on the state-local share formula and the way in which that formula has resulted in recent changes in the state-local share in projects for the CMSD. Mr. Ortiz provided a handout showing the factors that affect the calculation: land valuations, student enrollment and

property tax "effort" — measured as the number of mill levies approved by local school district residents.

Mr. Eaton presented a case study of changes in the state and local share determination for the CMSD. The CMSD experienced an unusual increase in the required district match from 75 percent to 88 percent over a two-year period. He explained that the reason for the 13 percent increase is a rise in property values caused by recent oil and gas extraction activity that has resulted in an increase of 81 percent in the assessed valuation of property in the district from 2011 to 2014.

Mr. Eaton explained that the state-local match formula is designed to calibrate the state-local share in an equitable manner by increasing the state's share (percentage) of a PSCOC project award in districts that have low per capita property values and a high level of bonded indebtedness. Relatively poor school districts and districts that make a good "effort" (i.e., that levy taxes on themselves) receive a higher share of project funding from the state. Conversely, school districts with high per capita property values (greater property wealth) have a lower state match percentage. Rapidly increasing property values, relative to other school districts, are the chief cause driving up the local share match percentage for the CMSD and other oil-and-natural-gas-producing school districts.

Task force discussion included the possibility of studying the formula to see if it is still working as intended. Mr. Eaton explained that the idea had been discussed by the PSCOC, but not all PSCOC members supported the idea. Mr. Eaton said that prior to that indication, preliminary contacts had been made by the PSFA regarding a study of the formula by an independent economist. Some task force members urged that this work move forward as it is important to the legislature to make sure that the formula is fair and manages the coming reduction in revenue.

### **2015 Update of the 2012 PSCOOTF Policy Brief on Public School Finance Act Policy Funding Formula Issues**

Ms. Ball and Mr. Eaton presented the "Review of Public School Capital Outlay Act Policy and Funding Formula Issues 2015 Interim Update" to the task force. Ms. Ball presented background on the state share funding formula and its performance as an "equalizing" mechanism since its implementation during the 2004 funding cycle. Ms. Ball explained that the formula and the offset provisions were developed in response to a judge's order in the *Zuni* lawsuit and are the basis of the current standards-based process in the Public School Capital Outlay Act. The formula has an effect on two disequalizing realities:

- because direct legislative appropriations for public school capital outlay purposes are the result of a political process, they cannot be allocated in an equalizing manner for school district facilities in various school districts; and
- because the ability of a school district to raise sufficient funding for school capital outlay needs is primarily based on assessed property valuations per student, school



districts with more property tax wealth per student have an advantage over other districts with less property tax wealth per student.

The formula addresses these two issues by adjusting the state and local share of the award granted by the PSCOC.

Ms. Ball explained that among the policy considerations presented in the policy brief of 2012 was a consideration of adjusting the formula to take into account population density as well as the effect of the size of a school district's property tax base per student. Rural school districts with small student populations tend to be at a particular disadvantage because they simply cannot use facility space as efficiently as districts that are densely populated. They are necessarily less space efficient because, even with a small student population, required core classroom spaces and such spaces as food service, administration, libraries and multipurpose rooms can be the same or similar in size as school districts with larger student populations.

The chair noted that even though the issues of the funding formula have been discussed in past years, the funding formula has not had significant changes or been studied since its implementation. Task force members discussed the possibility of making a concerted effort this interim to study the formula anew and make recommendations. Regarding possible funding for such a study, in response to a task force question, Mr. Burciaga said that there may be enough funding for a small, third-party contract to engage an economist to study the issue. Task force discussion involved concerns about a lack of budgeted funds for additional meetings in case a subcommittee is designated to oversee implementation of such a contract, and other concerns about the upcoming hearing in the *Zuni* lawsuit by the GMCSO.

The task force agreed by consensus to study the funding formula issue with the aid of a contract economist working with existing staff and to present policy options to the full task force, if possible, before the 2016 legislative session. The chair appointed Senator Stewart and Mr. Foster to be chair and vice chair, respectively, of a funding formula subcommittee. Additional members will be appointed before a subcommittee meeting held before the next task force meeting on September 16. The subcommittee will work with a potential contract economist to develop a scope of work and report to the task force at the September meeting.

There being no more business to come before the task force, the meeting adjourned at 4:22 p.m.